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APPENDIX

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Supreme Court of the United States •

OCTOBER TERM, 1968

No. 198

RICHARD M. SMITH,

Petitioner,

—v.—

FRED M. HOOEY, Judge,
Criminal District Court of Harris County, Texas,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR CERTIORARI FILED AUGUST 10, 1967
CERTIORARI GRANTED JUNE 17, 1968

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DOCKET ENTRIES

No docket entries appear in the record, or on the records of the Supreme Court of Texas. A chronological list of the important dates of the proceedings below follows:

1. Late spring, 1967. Petition for a Writ of Mandamus filed in the Supreme Court of Texas. (The exact date does not appear of record, but the petition makes reference to a decision of the Supreme Court of Idaho handed down on April 21, 1967, and must have been subsequent to that date.)

2. June 28, 1967: Petition denied by the Supreme Court of Texas.

IN THE SUPREME COURT OF TEXAS
AUSTIN, TEXAS

O.C. 10 Denied

RICHARD SMITH, PETITIONER

vs.

HONORABLE FRED M. HOOEY, JUDGE, CRIMINAL DISTRICT
COURT NO. 6, OF HARRIS COUNTY, TEXAS, RESPONDENT

PETITION FOR A WRIT OF MANDAMUS

The Verified Petition For A Writ Of Mandamus Respectfully Shows Unto This Honorable Court As Follows:

1. That the County Prosecutor of Harris County Texas caused a warrant and complaint to be filed against the petitioner charging petitioner with theft under the criminal statutes of the State of Texas, and;
2. On November 3, 1960, petitioner filed with the respondent Court his motion for speedy trial which motion was completely ignored by the respondent and the County Prosecutor, and;
3. For over a period of six years petitioner has attempted to gain a speedy trial in the respondent's Court which requests have been ignored by the respondent and the County Prosecutor, and;
4. On April 17, 1967, petitioner filed in the respondent's Court his verified motion to dismiss such charge for want of prosecution, and;
5. The County Prosecutor mailed to petitioner a copy of the Court docket order showing that trial was set for March 31, 1967, No. 90,871, and;
6. That no disposition has been made by the respondent on the motion to dismiss for want of prosecution and petitioner has lost contact with the Court as well as the County Prosecutor, and;
7. Petitioner alleges there cannot now be a speedy trial within the meaning of the Sixth Amendment to the United States Constitution and the Constitution and Statutes of the State of Texas; so as to satisfy the requirement of

due process of law as guaranteed to him by the Fourteenth and Fifth Amendments to the United States Constitution, in that:

The Supreme Court of the United States in *Klopfers v. North Carolina*, — U.S. —, 87 S.Ct. 988, 18 L.Ed. (2d) — held that an accused was entitled to a speedy trial and that each of the 50 States guarantees the right to a speedy trial to its citizens. The Supreme Court in the *Klopfers* decision decided March 13, 1967, said:

"That this right was considered fundamental at this early period in our history is evidenced by its guarantee in the Constitutions of several of the States of the new nation," (Citations in the footnote), as well as by its prominent position in the Sixth Amendment. Today, each of the 50 States guarantees the right to a speedy trial to its citizens.

"The history of the right to a speedy trial and its reception in this country clearly establishes that it is one of the most basic rights preserved by our Constitution."

In *Richerson vs. State of Idaho*, No. 9751, January Term, 1967, opinion filed on April 21, 1967, the Supreme Court of Idaho, citing *Klopfers v. North Carolina*, supra, among numerous other decisions, reversed the lower Court in refusing to dismiss charges where the facts disclosed that the accused had been denied a speedy trial. The Supreme Court in the *Richerson* case, supra, citing *State ex rel. Fredenberg v. Byrne*, 123 N.W. (2d) 305 (Wisc., 1963), discussed the fact that the accused's own actions caused him to be outside the jurisdiction as follows:

"* * * Although the imprisonment of the petitioner at Sandstone is his own fault that in itself does not excuse the state's long delay in bringing him to trial in the absence of a showing that the state was unable to obtain his return for trial. Moreover, the effect of a detainer warrant at Sandstone prison may in some cases result in a loss of privileges such as assignments outside the prison walls or may necessitate 'cell housing' or possible transfer to a penitentiary." 123 N.W. (2d) at 309.

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In Commonwealth v. McGrath, 205 N.E. (2d) 710 (Mass., 1965), that Court stated:

"The decisions which have adopted a contrary position are unconvincing. Some of them reason that a state need not request the delivery of a person incarcerated elsewhere because it cannot demand his custody as a matter of unqualified right. But we fail to see why the lack of an absolute right excuses the exercise of due diligence. Other decisions are based on the motion that the defendant's absence from the jurisdiction is the results of his own wrongdoing. This, however, is not a situation where the accused is voluntarily remaining without the Commonwealth. Nor is it a case where the Federal authorities have refused to release him. * * * Here, the delay in the trial of the defendant for a crime of which he is presumed innocent can be prevented." 205 N.E. (2d) at 714.

It is respectfully submitted that the County Prosecutor of Harris County, Texas has not shown good faith and the delay of the trial in the case at bar must be attributed to the state. For reasons above stated and upon the authorities cited herein the right to a speedy trial has been denied to petitioner and he is entitled to have the charge dismissed.

Wherefore, petitioner respectfully prays that this Honorable Court issue a rule to show cause directed to the Honorable Fred M. Hooey, Judge, of the Criminal District Court No. 6 of Harris County, Texas, commanding the said respondent to show cause, returnable before the bar of this Honorable Court, on a day to be made certain therein, why the charge should not be dismissed, and why a writ of mandamus should not be granted herein directing the said respondent Court to dismiss the charge therein pending against petitioner.

Respectfully submitted,

(RICHARD M. SMITH)

RICHARD M. SMITH

Petitioner

Box 1000

Leavenworth, Kansas 66048

DENIAL OF WRIT

**THE SUPREME COURT OF TEXAS
CAPITOL STATION
AUSTIN, TEXAS
78711**

June 28, 1967

**Robert W. Calvert
Chief Justice
Meade F. Griffin
Clyde E. Smith
Ruel C. Walker
James R. Norvell
Joe Greenhill
Robert W. Hamilton
Zollie Steakley
Jack Pope
Associate Justices**

**Garson R. Jackson
Clerk**

**Mr. Richard M. Smith
No. 77644-L
United States Penitentiary
Leavenworth, Kansas 66048**

Dear Sir:

The Supreme Court of Texas has this day denied your Petition for Writ of Mandamus.

We cite you to *Cooper v. State*, 400 S.W.2d 890 (1966), and to *Lawrence v. State of Texas*, 412 S.W.2d 40 (1967). We are enclosing a copy of the Per Curiam Opinion in the latter case.

Very truly yours,

**(M. W. BERTRAM)
M. W. BERTRAM
Administrative Assistant**

Copy of Per Curiam Opinion enclosed

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IN THE SUPREME COURT OF TEXAS

No. A-11,760

DONALD WAYNE LAWRENCE, RELATOR

v.

THE STATE OF TEXAS, ET AL., RESPONDENTS

**ORIGINAL MANDAMUS PROCEEDING
PER CURIAM**

This is an original proceeding in this court in which relator seeks a writ of mandamus to compel

"HONORABLE GEORGE D. TAYLOR, Judge, and the Criminal District Court of Jefferson County, Texas, to proceed to trial in Cause No. 25023 and requiring all respondents to secure the presence of Relator at such trial by issuing a proper writ of habeas corpus ad prosequendum and causing the same to be served on the appropriate United States Marshal and the Warden of the Federal Correctional Institution at Texarkana, Texas, and by issuing such other and further orders as may be necessary to cause THE STATE OF TEXAS and Jefferson County to make necessary arrangements for payment of expenses required by the United States Marshal in the premises; or, in the alternative, directing appropriate Respondents to dismiss the indictment in Cause No. 25023 . . ."

Relator is confined in the Federal Correctional Institution at Texarkana by virtue of a sentence imposed by a United States District Court in California. He contends that the failure and refusal of respondents, Honorable George D. Taylor, Criminal District Judge of Jefferson County, Honorable W. C. Lindsey, Criminal District Attorney of Jefferson County, the Commissioners Court of Jefferson County, and Honorable R. E. Culberson, Sheriff of Jefferson County, to take all necessary steps to obtain his production and to bring him to trial on the felony

indictment pending against him in Jefferson County is an infringement of his constitutional right to a speedy public trial.

We had occasion to consider and decide this exact question in *Cooper v. State*, 400 S.W.2d 890 (1966). A majority of the Justices of the court adhere to the views there expressed, and the petition for writ of mandamus is accordingly denied. The four Justices who dissented in *Cooper* adhere to the views expressed in the dissenting opinion in that case and for the reasons there stated would grant the writ in this case.

Opinion delivered:

March 8, 1967

**STIPULATION OF COUNSEL
IN THE SUPREME COURT OF THE UNITED STATES**

[Caption omitted in printing]

The parties in the above-entitled case, through their counsel, stipulate and agree as follows:

1. That the facts set forth in Respondent's Response to the Petition for Certiorari may be taken as true, and that those facts would have been before the Texas Supreme Court if it had ordered a Response to the Petition for Mandamus.
2. That on April 13, 1960, Petitioner was sentenced to the custody of the Attorney General of the United States for a period of ~~seven~~ years and is still in such custody.
3. That there are no docket entries or formal order denying the petition in the records of the Texas Supreme Court and that the order of the Texas Supreme Court is sufficiently evidenced by the letter from M. W. Bertram.
4. That the appendix to be printed for the Supreme Court of the United States shall consist of the following documents: Petition for Writ of Mandamus; letter of June 28, 1967, from M. W. Bertram to Petitioner; and this Stipulation.

(CHARLES ALAN WRIGHT)
CHARLES ALAN WRIGHT
Attorney for Petitioner

(JOE S. MOSS)
JOE S. MOSS
Assistant District Attorney
Harris County, Texas
Attorney for Respondent

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SUPREME COURT OF THE UNITED STATES

No. 495 Misc., October Term, 1967

RICHARD M. SMITH, PETITIONER

v.

FRED M. HOOEY, Judge,
Criminal District Court of Harris County, Texas

On petition for writ of Certiorari to the Supreme Court
of the State of Texas.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS AND GRANTING PETITION FOR
WRIT OF CERTIORARI—June 17, 1968

On consideration of the motion for leave to proceed
herein *in forma pauperis* and of the petition for writ of
certiorari, it is ordered by this Court that the motion to
proceed *in forma pauperis* be, and the same is hereby,
granted; and that the petition for writ of certiorari be,
and the same is hereby, granted. The case is transferred
to the appellate docket as No. 1536 and placed on the
summary calendar.

And it is further ordered that the duly certified copy
of the transcript of the proceedings below which accom-
panied the petition shall be treated as though filed in
response to such writ.